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**Alliance** OF AUTOMOBILE MANUFACTURERS

May 16, 2000

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**BY MESSENGER**

Surface Transportation Board
Office of the Secretary
Case Control Unit
ATTN: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary
MAY 16 2000
Part of
Public Record

Re: **STB Ex Parte No. 582 (Sub-No. 1): Advance Notice of Proposed Rulemaking Regarding Major Rail Consolidation Procedures, <u>49 C.F.R. part 1180, subpart A (49 C.F.R. §§ 1180.0 – 1180.9)</u>**

Dear Sir or Madam:

Enclosed for filing in this matter are the original and 25 copies of the comments of the Alliance of Automobile Manufacturers with respect to the Advance Notice of Proposed Rulemaking pertaining to the Board's regulations governing major rail consolidations. Also enclosed is a computer diskette containing a copy of the filing in Wordperfect 5.x, which we understand should be convertible to Wordperfect 7.0.

Please acknowledge receipt of these papers by date-stamping the enclosed duplicate copy and returning it with our messenger. Thank you for your attention to this matter and please call me if you have any questions about our filing ((202) 326-5512).

Cordially yours,

Anthony H. Anikeeff
Vice President and General Counsel

Enclosures (as noted)
cc: All Parties of record (per Certificate of Service)

**BMW Group • DaimlerChrysler • Fiat • Ford Motor Company • General Motors**
**Isuzu • Mazda • Mitsubishi Motors • Nissan • Porsche • Toyota • Volkswagen • Volvo**

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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES



## COMMENTS OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS REGARDING THE SURFACE TRANSPORTATION BOARD'S MAJOR RAIL CONSOLIDATION RULES, 49 C.F.R. PART 1180, SUBPART A

### INTRODUCTION AND STATEMENT OF INTEREST

Pursuant to the Board's March 31, 2000, Advanced Notice of Proposed Rulemaking ("ANPRM"), the Alliance of Automobile Manufacturers (the "Alliance") respectfully submits these comments for the Board's consideration in assessing whether to modify its regulations that govern proposals for major rail consolidations, 49 C.F.R. Part 1180, Subpart A (49 C.F.R. §§ 1180.0 – 1180.9).

The Alliance is a trade association for car and light truck manufacturers whose members include BMW Group, DaimlerChrysler Corporation, Fiat Auto S.p.A., Ford Motor Company, General Motors Corporation, Isuzu Motors America, Inc., Mazda North American Operations, Mitsubishi Motor Sales of America, Inc., Nissan North America, Inc., Porsche Cars North America, Inc., Toyota Motor North America, Inc., Volkswagen of America, Inc., and Volvo Cars of North America, Inc. Together, our member companies have approximately 600,000 employees in the United States, with 250 manufacturing facilities in 35 states, and represent more than 90 percent of U.S. auto sales. They also have facilities located in Canada and Mexico and are supplied by a myriad of parts suppliers. They, in turn, ship finished vehicles to hundreds of distributors and dealers.

## BACKGROUND

The automobile industry is one of the nation's major consumers of railroad transportation services. Collectively, the industry incurs billions of dollars in railroad shipping costs each year. According to the most recent Association of American Railroads data, the automobile industry expended almost $1.5 billion during 1998 just on the shipment of assembled passenger cars on Class I railroads. This figure, of course, omits the equally significant costs that are incurred in shipping the parts that are necessary to assemble the vehicles.

Over the years, railroads have constituted a vital transportation link throughout the United States, and into Canada and Mexico, for our members, from the relatively small to the largest. Indeed, the automobile industry is required to rely upon the railroads to a significant degree both for delivery of the parts necessary to fabricate the vehicles they manufacture and also for delivery of finished vehicles to their distributors and dealers. In our extremely competitive industry, the need for fast, reliable, and timely delivery has become paramount. Unfortunately, the ability of the industry to rely upon the railroads to deliver such service has been repeatedly shaken with each new consolidation over the last decade.

Prior to each proposed consolidation, the railroad industry assured the automobile industry and others that consolidation would result in more reliable delivery times, elimination of congestion, improved railway car-turnaround, improved trip transit time, better car utilization, and better coordination in complex terminal areas, among other things. Experience has proven time and again that the assured benefits either have not been forthcoming at all or have arrived only after extended and very costly disruptions. In fact, the common experience of our industry following virtually all the consolidations (as well as the breakup of Conrail) has been a history of disruptions, delays, inefficiencies, loss of access, and declining service. The adverse consequences of the railroad consolidations are pervasive, including, among others:

- Delayed, mis-delivered, and lost shipments.
- Insufficient rail capacity due to operational problems and congestion.
- Loss of competitive access, and even total loss of access, to rail lines.
- Significantly increased carrying costs because of delays attributable to shortages of equipment, power, crews; misrouted railroad cars; and, the railroads' inability to track their own equipment and shipments.
- Significant diversion costs attributable to unavailability of rail cars.
- Significantly increased costs because of the need to arrange for more expensive truck, air charter, and ship transport for parts and vehicles.
- Significant additional costs to arrange for independent tracking of shipments in the face of inadequate railroad information systems.
- Significant misinformation regarding shipments and billings.
- Severe congestion at interchange points and railroad yards leading to delays, confusion, and missed connections.
- Damages from excessive handling of railroad cars.

Even where railroad consolidations have shown some spotty benefits, they have taken years to achieve and have been overshadowed by the ever-lengthening "short-term" dislocations and inefficiencies. The problem this poses for the automobile industry is that it needs to ship hundreds of thousands of parts and tens of thousands of vehicles each day, including the day after a merger or other consolidation. The industry simply cannot wait for years for the post-consolidation dislocations to abate.

As a direct result of the declining quality of railroad service, our members have reluctantly been compelled to reduce their reliance on railroad transportation services. For example, one of our largest members reduced its purchase of railroad transportation services by seven percent over the last two years, totaling hundreds of millions of dollars, instead of maintaining or increasing its level of purchasing. Other members also have substantially reduced their purchases of railroad transportation services in recent years.

Considering the history of recent consolidations, the automobile industry is wary of yet another round of consolidations that, if carried to its logical conclusion, would likely lead to there being but two transcontinental carriers and many areas left with no competitive access at all. Before taking such a portentous step, we are of the view that a thorough examination of the consolidation situation is warranted.

The automobile industry is no stranger to consolidation; it remains, however, a highly competitive industry comprised of manufacturers, distributors, and dealers who compete vigorously on the basis of sales. That competition has created a vibrant market that forces companies to provide products that consumers desire. There is no doubt that consumers have benefited from such competition. It is our view that shippers equally benefit from competition.

Our members are of the view that deregulation of the railroad industry has been generally beneficial. Unfortunately, the recent consolidations have undermined the realization of those benefits. Although we are not in favor of re-regulation of the railroad industry, the failure of the railroad industry to deliver assured benefits from the recent rounds of consolidations requires that any further consolidation be scrutinized carefully.

During the merger moratorium that has been established by the Surface Transportation Board, the railroad industry must undertake to develop standards of service that will meet the reasonable needs and expectations of its customers. In this regard, there needs to be a thorough discussion with the automobile industry and the other principal consumers of railroad transportation services, in an appropriate forum, to establish the standards of acceptable service as well as the means to ensure compliance with those standards through relevant measurement and reporting criteria. There also, likely, needs to be a related discussion regarding methods to ensure the maintenance or enhancement of competitive railroad service. Although other matters may fall more within the purview of discussions within the railroad industry itself, based on our industry's experience over the past several years, we would hope that the industry itself would focus upon improved allocation of human resources, improved and more detailed operational planning, and developing advances in railroad information technology.

The Surface Transportation Board ("STB") can play a significant role in the process, and we support the STB's proposal to revise its regulations governing major rail consolidations. That process affords the STB a significant opportunity to encourage the industry to improve its service and to maintain adequate levels of competition that will benefit all who use the railroads.

## DISCUSSION

### 1. The STB Should Modify Its Regulations To Eliminate The "One Case At A Time" Rule And To Mandate The STB's Consideration Of The Downstream Effects Of Proposed Transactions

In its ANPRM, the STB proposes to amend its rules (1) to eliminate the "one case at a time" rule and (2) for all future major rail consolidation proceedings, to examine the likely "downstream" effects of a proposed transaction, including the likely strategic responses to that transaction by non-applicant railroads. The Alliance supports these proposed modifications.

The automobile industry is no stranger to consolidation, but it is concerned that the railroad industry may have reached the point where further consolidation has a detrimental effect upon competitive access and service levels. In this regard, the STB should not limit its consideration of proposed consolidations to the likely strategic responses by non-applicants, but should conduct an expanded inquiry into the projections and plans of the parties to avoid the disruptions, delays, inefficiencies and loss of access that have been the common experience of recent mergers.

In the sections below, we discuss our view that the STB can enhance its scrutiny of proposed consolidations by establishing improved reporting requirements for railroads regarding objective level-of-service performance. Such reports would establish a record of objective criteria that could be evaluated by the STB and interested stakeholders and would become a factor in whether to allow a proposed transaction to proceed.

## 2. Maintaining Safe Operations Should Be The Subject Of Continued Consideration For The STB

We concur, generally, with the view of the STB in its ANPRM that safety concerns may best be addressed on a case-by-case basis and that such matters are being addressed through proceedings involving the Federal Railroad Administration.

However, in this regard, we do note a safety concern that may have a broader-based impact that warrants attention by the STB at this stage. Some of our members have observed that staffing levels of some merged railroads have been reduced such that they lack sufficient numbers of trained staff who are available to be called into service on short notice at sites where needed. As a result, inadequately trained staff are utilized in congested areas or in particularly busy situations that pose increased safety hazards not just for railroad employees but also for employees of shippers who are required to work in these areas.

## 3. The STB Must Ensure That Railroads Maintain The Quality And Adequacy Of Rail Service

As is evident from the discussion in our background section above, the declining quality and adequacy of railroad service resulting from the recent consolidations is of significant concern to the automobile industry.

The experience of the automobile industry strongly suggests that consumers benefit from competition. Ultimately, competition provides the incentives for companies to produce products that consumers desire. We are of the view that consumers of transportation services from the railroads equally benefit from competition. Besides working to maintain and enhance competition, the STB can encourage improved quality and adequacy of service through additional means in the context of assessing proposed consolidations and related transactions.

We suggest that establishing more effective reporting and disclosure of meaningful service performance levels by railroads would be an effective method by which the STB can ensure and assess continued quality of service among entities that desire to consolidate. We encourage the STB to mandate such reporting.

The data collected and made available by various sources today is often inadequate and has not reflected the real-world experience of the automobile industry. For example, reports that rail company X regularly delivers product between point A and Point B in three days are meaningless when they omit that the product being delivered actually requires double or triple that time for delivery because rail cars are regularly delayed at an embarkation point before departure, or there is a shortage of equipment before the goods can be loaded, or the goods sit in a yard at the destination point before actual delivery. Reporting needs to be made more relevant, accurate, and comprehensive.

The STB should require the regular reporting and publication of comprehensive service performance levels to include, among other things, "Transit Times" and "Variability" for products and/or product categories delivered by railroads between various points. The "Transit Times" would measure actual transit times for products from pick-up point to destination point and account for all of the various delays that occur in the process. The "Variability" reports would measure the extent and frequency of late and early deliveries along particular routes. Such information should become part of the information that the STB considers in assessing whether the parties to a proposed transaction have established a record that suggests their consolidation or other arrangement would be likely to maintain, improve or lead to deterioration in service.

As part of this process, applicants for approval of a consolidation should be required, as part of their application, to project the enhanced level of service they propose to achieve and to explain why such improvements cannot be achieved through some means other than through the proposed transaction. The STB should require that such projections be presented in a format and supported by data that could be correlated by the STB with the data being reported under the expanded performance-level reporting system we have discussed above. In this regard, representations that are not objectively quantifiable would receive reduced consideration as compared with representations that are objectively verifiable.

Armed with such data, it should be possible for the STB and railroad consumers to address their concerns regarding future service quality and adequacy with the rail companies proposing a consolidation or related transaction. Such a plan would be further enhanced, as we discuss in paragraph six, below, were the STB to continue tracking performance criteria after a consolidation or similar transaction. That would afford the STB and interested stakeholders a further opportunity to encourage companies to fulfill promises that had been made.

With respect to the issue of loss of competitive service, the STB should consider establishing requirements that the parties to a proposed transaction justify the loss of any such service and explain why it is not possible to maintain continued competitive service through modification of the proposed transaction. Further, the STB should require that the parties to the proposed transaction furnish notice to the affected entities in sufficient time so that they will be afforded a meaningful opportunity to address the matter at the STB. In considering a proposed transaction, the STB should assess the extent to which competitive access will be affected by the proposed transaction as a factor in considering whether to allow the transaction to proceed as planned.

4. **The STB Must Ensure That Competition Among Railroads Is Promoted And Enhanced**

In its ANPRM, the STB suggests that it may be time for it to place a greater emphasis on enhancing, rather than simply preserving, competition. The Alliance wholeheartedly supports this proposed change in perspective. The recent mergers have resulted in a number of our members losing competitive access at their facilities across the country. Generally, such loss has resulted in deterioration of service and increased costs. Such consequences of consolidations serve the interests of virtually no one.

The STB should ensure that the interests of railroad consumers are preserved through the enhancement of competition to the maximum extent possible in considering any future transactions.

5. **The STB Should Eliminate The Case-By-Case Approach In Assessing "Three-To-Two" Mergers**

In its ANPRM, the STB inquires whether and how its assessment of "three-to-two" mergers should be reflected in its rules, or left to a case-by-case approach as is current practice. We are concerned that, as a matter or practice, there may be a *de facto* presumption at the STB to approve a three-to-two merger on the theory that a choice between two railroads is enough. Such a philosophy is erroneous.

The STB should modify its rules to clearly establish that there will be no presumption in favor of approving a merger where the merger will reduce the number of rail companies serving an area from three to two. Our industry's experience has been that consumers (and ultimately their suppliers) benefit most where there is healthy competition between several suppliers. Accordingly, it should be the policy of the STB to scrutinize any proposed consolidation from three to two suppliers with as much concern as it would a consolidation from two suppliers to one supplier.

### 6. The STB Should Develop More Formalized Means To Assess Alleged Merger-Related Public Interest Benefits

As reflected in our background discussion above, the automobile industry is particularly concerned about the failure of the railroad industry to timely fulfill, if at all, the many promises that preceded each of the recent consolidations. In this regard, there appears to be lacking a system to assess the feasibility and likelihood of the promised benefits of a proposed transaction and then to track performance in a manner that would allow pressure to be brought to bear if promised improvements are not achieved.

In our discussion in paragraph three, above, regarding the maintenance of rail service, we suggested that the STB establish more formalized reporting of service performance levels that would be tracked and considered by the STB as part of its analysis of whether to authorize a transaction to proceed. We further support the STB's suggestion in its ANPRM that it conduct post-merger monitoring to help ensure that projected benefits are actually realized, and within the times that were originally promised. We recommend that such review be conducted through periodic reviews in an appropriate public forum that affords railroad consumers the opportunity to contribute to the review discussion. Such public review of railroad performance, in a venue where needed improvements and the means to achieve them can be the subject of discussion, may well provide the incentive for unilateral improvements by the railroads.

## CONCLUSION

We commend the STB for undertaking to consider a revision to its rail merger rules and appreciate the opportunity to submit these comments as part of the STB's ANPRM process. We are willing to participate in and to contribute to whatever dialogue that might prove to be fruitful to this process and look forward to working with the STB and the railroad industry on these mutually significant issues.

Respectfully submitted,

ALLIANCE OF AUTOMOBILE MANUFACTURERS

By: ____________________
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Date: May 16, 2000

**CERTIFICATE OF SERVICE**

This is to certify that on May 16, 2000, copies of the foregoing "COMMENTS OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS REGARDING THE SURFACE TRANSPORTATION BOARD'S MAJOR RAIL CONSOLIDATION RULES, 49 C.F.R. PART 1180, SUBPART A," were served by United States mail, first class postage prepaid, on all parties of record as set forth in the Board's Order of April 28, 2000, as modified by the Board's Order of May 10, 2000.

Wanda J. Stokes